523(a)(5) : State law considerations / pro rata shod

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:	
NEIL O. INGRAM f/d/b/a Neil Ingram Construction Company (Chapter 7 Case 487-01119)	Adversary Proceeding Number 488-0002
Debtor	
JANICE G. INGRAM	
Plaintiff	
v.	
NEIL O. INGRAM	
Defendant	

FILED
at 2 O'clock & 45 min. P M
Date 5/17/88
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia PCB

Adv. 88-0019
Local
Bankr. S.D.Ga.
June 1, 1988)

MEMORANDUM AND ORDER

The above and foregoing Complaint to Determine Dischargeabililty of Debtor coming on to be heard on April 25, 1988, both parties being present and represented by counsel, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) The parties were divorced by the Superior Court of Chatham County, Georgia, on or about January 26, 1987. The parties entered into a Consent Divorce Decree signed by the respective attorneys of record of the parties. Paragraph "9" of the Judgment and Decree required the Defendant, Neil O. Ingram, to be responsible for one-half of any and all school expenses incurred on behalf of the minor children, including tuition, books, transportation and other similar expenses. The expenses were not to exceed one-half of the typical expenses at Calvary Baptist Temple.

2) One of the minor children was enrolled at the time of the taking of the Judgment and Decree in Calvary Baptist Temple and the Defendant indicated that he was desirous of keeping the children at Calvary if he was capable of affording same. Child support was set in the amount of $50.00 per week per child; the tuition for the minor child currently enrolled was $200.00 per month, plus miscellaneous expenses or a maximum expense to the Defendant of $100.00 per month. While the parties were married, they shared equally in the budget and financing of the household expenses and, at the time of the divorce their income was approximately equal.

CONCLUSIONS OF LAW

To determine whether or not debts similar to private school expenses are non-dischargeable pursuant to 11 U.S.C. Section 523(a) requires: "Only a simple inquiry into whether or not the obligation at issue is in the nature of support. This inquiry would usually take the form of deciding whether the obligation was in the nature of support as opposed to being in the nature of a property settlement. Thus, there will be no necessity for a precise investigation of the spouse's circumstances to determine the appropriate level of need or support. It will not be relevant that the circumstance of the parties may have changed . . . ". In re Harrell, 754 F.2d 902, 907 (11th Cir. 1985) (Emphasis original). "What constitutes alimony, maintenance, or support will be determined under the bankruptcy laws, not state law." Id. at 905, citing H.R. Rep. No. 595, 95th Cong., 1st Sess. 364 (1977), U.S. Code. Cong. and Admin. News 1978, pp.5787, 6319. Notwithstanding that bankruptcy law, not state law controls the determination of whether or not an obligation is in the nature of support, "it does not necessarily follow that state law must be ignored completely". In re Calhoun, 715 F.2d 1103, 1107 (6th Cir. 1983). Clearly, although state law is not controlling, it may nonetheless provide factors which may be useful in determining whether an obligation is in the nature of support. See:

In re Bedingfield, CV# 483-109 (S.D.Ga. 1983); In re Spong, 661 F.2d 6 (2nd Cir. 1981).

The threshold inquiry is to determine whether the parties to the divorce, or the state court, "intended to create an obligation to provide support; if they did not, the inquiry ends there." Bedingfield, supra, at 10, citing In re Calhoun. In determining whether there is an "intent to support", reference to the obligations for support traditionally imposed under state law is helpful. These include an inquiry into whether or not the subject debt had the effect of providing for the necessities as imposed under traditional state law, in the daily lives of the minor children or that of the spouse. See Bedingfield, supra, at 11.

Both the Plaintiff and the Defendant testified that they intended their minor children to be enrolled in Calvary Baptist School. Defendant obtained a private education himself and was desirous that the children also obtain an education through the private school system as long as he was able to afford it. Furthermore, providing for the education of minor children has traditionally been included in the parents' duty of support. See Collins v. Collins, 231 Ga. 683, 203 S.E. 2d 524 (1974); Harrison v. Harrison, 233 Ga. 12, 209 S.E. 2d 607

(1974).[1]

An additional factor in determining the parties' intent is whether the amount of support represented by the assumption of the debt is "manifestly unreasonable" under traditional concepts of support. In re Brown, 74 B.R. 968 (Bankr. D.Conn. 1987). As applied to the facts in this case, the additional obligation to pay one-half of these expenses was not "manifestly unreasonable" as of the date of the decree.

Accordingly, I conclude that the parties did, in fact, intend to create an obligation in the nature of support for their children by the payment of private school expenses. As such, the debt is non-dischargeable in bankruptcy. Whether this support obligation is manifestly unreasonable or burdensome to either party as a result of changed circumstances since the date

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[1] The traditional duty of support imposed under state law to provide education expenses for minor children in no way limits the indebted spouse's support obligation to his or her child's minority. The Harrell court was clear "that the nature of the debtor's promise to pay educational expenses and child support is not determined by the legal age of majority under state law." Harrell, supra. at 905. Furthermore, "the absence of a state law duty does not determine that an obligation is dischargeable in bankruptcy". Id. at 906.

of the decree is not an issue which may properly be resolved by this court. If the parties wish to litigate this issue, considerations of comity dictate that it be reserved to the state courts. Harrell, supra. at 907.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the obligation of the Defendant, Neil O. Ingram, under the Judgment and Decree issued by the Superior Court of Chatham County, Georgia, on January 26, 1987, as to Paragraph "9" thereof is found to be for support, maintenance and education of the minor children and as such is non-dischargeable pursuant to 11 U.S.C. Section 523(a)(5).

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 13th day of May, 1988.